

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

SUPERIOR COURT

DOCKET NO. 2085CV684C

In re:

**AUTHORITY TO UNSEAL PRECINCT
2 BALLOTS FOR THE TOWN OF GRAFTON
ANNUAL TOWN ELECTION AND COUNT
SAME**


MEMORANDUM OF DECISION AND ORDER
In re: AUTHORITY TO UNSEAL PRECINCT 2
BALLOTS FOR THE TOWN OF GRAFTON ANNUAL TOWN
SELECTION AND COUNT SAME EMERGENCY MOTION FOR
JUDGMENT ON THE PLEADINGS

The Emergency Motion for Judgment on the Pleadings is ALLOWED, subject to the following:

The Town Clerk and her designees shall unseal the uncounted Precinct 2 ballots and hand-count all of the ballots cast in Precinct 2 for the June 23, 2020 Grafton annual town election. This hand-count shall be construed as the original count of Precinct 2 ballots. The recertification and transmission of the election results may take place after the completion of the hand-count.

Notice of the substance of the Verified Complaint filed in this matter and this Order shall be given to all Precinct 2 candidates and all Precinct 2 registered voters by publication forthwith in a local newspaper with at least weekly publication, and posting on the home page for the Town of Grafton website, if any, as well as on any other form of social mediate utilized by the Town of Grafton, such as Face Book.

Date: July 1, 2020

A handwritten signature in black ink, appearing to read 'Susan E. Sullivan', written over a horizontal line.

Susan E. Sullivan
Assoc. Justice of the Superior Court

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 20CV684-C

In re:

AUTHORITY TO UNSEAL PRECINCT
2 BALLOTS FOR THE TOWN OF
GRAFTON ANNUAL TOWN
ELECTION AND COUNT SAME

FILED

--JUL 01 2020

ATTEST:

[Signature]
CLERK
CLERK

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EMERGENCY MOTION FOR JUDGMENT ON THE PLEADINGS

NOW COMES Kandy Lavallee, the Town Clerk of the Town of Grafton, Massachusetts, and hereby moves this Honorable Court to grant her judgment on the pleadings in the above-captioned matter, and to do so immediately on an emergency basis.

IN SUPPORT THEREOF, the Town Clerk states the following:

1. On Tuesday, June 30, 2020, Grafton Assistant Town Clerk, Paul Cook, ("Assistant Town Clerk") was filing forms in the vault in the Town Clerk's Office and discovered a box of secured and sealed (unopened) early voting ballots ("Unopened Ballots") that the Town had received prior to election day for Precinct 2. The box had been placed on top of other similar boxes that contained blank absentee/early voting ballots that had never been requested by voters.
2. After the Assistant Town Clerk told the Town Clerk that he had found the Unopened Ballots, the Town Clerk inspected the contents of the box and found that it contained 202 sealed early voting ballots of Precinct 2 that had not been counted.
3. The Town Clerk spoke with all staff to ascertain how it was that the Unopened Ballots had not been counted.
4. The Clerk's Office had sent out a record 1,800 ballots to voters who requested to vote early or absentee for this election.
5. When the Clerk's Office received the returned ballots, staff used boxes that had originally contained the blank absentee/early voting ballots to store returned ballots until election day.

7/1/20 ALLOWED, Subject to advice requirements
and procedures set forth in Memorandum of
Decision and Order Sullivan, J., J.


Because the box of Unopened Ballots was placed on top of the stack of identical boxes of unused ballots, the box of Unopened Ballots was inadvertently missed on election day.

6. After the conversations described above, the Town Clerk contacted the Secretary of State Elections Division to alert it to the discovery of the Unopened Ballots and seek guidance regarding having them counted and added to the election results.
7. The Secretary of State advised the Town Clerk to seek a court order to allow her to unseal and count the Unopened Ballots and add them to the election totals.

WHEREFORE, the Town Clerk respectfully requests that this Honorable Court enter judgment and order the following relief forthwith and without a hearing, to be effective immediately:

1. That, notwithstanding the provision of any general or special law, bylaw or regulation to the contrary, all of the ballots cast in Precinct 2 for the June 23, 2020 Grafton annual town election may be unsealed by the Town Clerk and her designees at her earliest convenience.
2. That, notwithstanding the provision of any general or special law, bylaw or regulation to the contrary, all of the ballots cast in Precinct 2 for the June 23, 2020 Grafton annual town election may be counted by hand by the Town Clerk and her designees at the earliest opportunity.
3. That this hand-count be construed as the original count of said ballots and not a recount thereof.
4. That the statutory procedures and requirements for recounts of ballots not apply to this hand count.
5. That, notwithstanding the provision of any general or special law, bylaw or regulation to the contrary, the re-certification and transmission of the results of the June 23, 2020 Grafton annual town election need not take place until after this hand-count has been completed.

Respectfully Submitted,
Kandy Lavallee, Town of Grafton Town Clerk,
By Town Counsel


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